

STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE

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*In the Matter of the PECFA Appeal of*

Stanley Lach  
Prentice Petroleum Inc  
1305 Railroad Avenue  
Prentice WI 54556-0200

PECFA Claim # 54556-0200-05  
Hearing #01-364

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**DECISION ON DEPARTMENT'S MOTION TO DISMISS**

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The Department of Commerce has moved for the dismissal of the appeal in this matter because the appeal was not filed by the claimant or his attorney, but was filed by the claimant's bank, Community State Bank of Prentice, to whom the claimant had assigned the proceeds of the PECFA award.

**BACKGROUND**

In a decision dated October 24, 2001, the Department of Commerce (hereinafter "Department") made an award of \$27,979.49 for a PECFA claim submitted by the claimant. The claimant had assigned his interest in the PECFA award, per provisions contained within the rules promulgated by the Department for the PECFA program, to Community State Bank of Prentice, the bank that had given the claimant the loan to pay for the remediation costs. The Community State Bank of Prentice received the reimbursement check from the Department and timely appealed the portion of that award that included the calculation of interest on the bank's loan to the claimant for remediation costs.

**DISCUSSION**

The appeal in this matter complies with the requirements of Wis. Stat. Sec. 101.02)(6)(e), the statutory section that defines those entities that have the right to appeal any order of the Department of Commerce. Specifically, that provision provides that "[A]ny employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing of the reasonableness of any order of the department in the manner provided in this subchapter." (underlined portion added). The Community State Bank of Prentice is clearly an entity interested in the proceeds of the PECFA award --personal property -- given that the award covers the loan it extended to the PECFA claimant, Stanley Lach and Prentice Petroleum, Inc. More importantly, a provision contained within the Department rules, found at Chapter Comm 47, Petroleum Environmental Cleanup Fund, provides the following:

**Comm 47.15 Assignment of awards.** By written notification to the department, a claimant may make an assignment of an award to an institution which lends money to the claimant for the purpose of conducting remediation activities reimbursed under this chapter, as specified in s. 101.143(4m), Stats. This assignment of an award creates and perfects a lien in favor of the assignee in the proceeds of the award.

The statutory section referred to in the above-cited rule amplifies the rule, in part, as follows: "The lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan". Black's Law Dictionary, 5th edition, West Publishing Company, 1979, contains several definitions of a "lien" from various sources, including a "charge or security or encumbrance upon property", a "claim for charge on property for payment of some debt, obligation or duty", "property rights" and a "charge [sic] against or interest in property to secure payment of a debt or performance of an obligation".

Therefore, not only does Community State Bank of Prentice have a clear interest in the proper calculation of interest fees for its loan to the claimant, it has an ownership interest in the proceeds of that award by virtue of the lien it holds on the award proceeds, and therefore constitutes a proper appellant under the applicable law.

#### ORDER

The Department's motion to dismiss is denied. The matter will proceed to hearing unless otherwise disposed of.

Mailed To:

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MSA Professional Services Inc.  
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John A. Kisiel  
Department of Commerce

BY: Beverly A. Crosson  
Administrative Law Judge  
Acting as Hearing Examiner for the  
Department of Commerce